(Caption Omitted)

Motion to Recall Mandate and Reinstate Appeal
Motion to Substitute Counsel

HIRAM W. MORRIS, JR., would show unto this court that this appeal was dismissed on motion by the state for failure to prosecute on January 12, 1968.

That subsequent to the filing of the notice of appeal, he had retained John E. McCarey, Esq., of Cocoa Beach, Florida, to prosecute this appeal in his behalf, that he has satisfied all financial responsibilities requested by Mr. McCarey; that Mr. McCarey has never advised him that this appeal was not being prosecuted, nor has he been advised by Mr. McCarey, the attorney general, or the clerk of this court, of the state's motion to dismiss this appeal for failure to prosecute.

He initially learned of the dismissal from his bondsman on Thursday, February 8, 1968, and his attempts to speak with Mr. McCarey since that time have been futile.

He believes his appeal is meritorious, and has retained Richard Kanner, Esq., to represent him in such further proceedings as may be necessary.

The court still retains jurisdiction over this cause, under the ruling of Chapman v. St. Stephens Protestant Episcopal Church, 138 So. 630 (Fla. 1932), that the appellate court retains jurisdiction over all matters until the end of the term.

WHEREFORE, he prays:

1. That the mandate issued in this cause be recalled, and his appeal be reinstated, and he be allowed within a

day certain to be set by this court to file such briefs and pleadings as may be advisable.

2. That Richard Kanner be granted leave to represent him in further proceedings.

(Signature omitted.)

(Jurat omitted.)

DISTRICT COURT OF APPEAL

Fourth District
P. O. Box 1449
Vero Beach, Florida 32960

February 14, 1968

Richard Kanner, Esq.
609 Professional Arts Center
1150 N. W. 14th Street
Miami, Florida

Robert J. Randolph, Esq.
P. O. Box 1546
Stuart, Florida

Charles W. Musgrove, Esq.
Assistant Attorney General
P. O. Box 640
Vero Beach, Florida

John E. McCarey, Esq.
Box 381
Cocoa Beach, Florida

Re: Hiram W. Morris, Jr. v. State—Appeal No. 1340
Hiram W. Morris, Jr. v. State—Appeal No. 1461

Gentlemen:

Appellant's motion to recall mandate and reinstate appeal and motion to substitute counsel, filed February 14, 1968 in the above appeals, will be submitted to the court on Thursday, March 7, 1968. Florida Appellate Rule 3.9(d).

If all interested parties file and serve written waivers of oral argument, the court will consider the motions in conference on such records, briefs and affidavits as have

been timely submitted in accordance with F.A.R. 3.6(k), 3.9(e) and 3.9(g).

In the absence of waivers by all interested parties, counsel desiring to offer oral argument for or against the motions will be given an opportunity to do so at 9:30 AM at City Hall, Vero Beach. F.A.R. 3.9(d)(e).

Very truly yours,

B. Kemp Haskell
Clerk

jm
cc: Hon. Dorothy Pierce, Clerk (369 and 368)

(Caption Omitted)

Order

March 8, 1968.

ORDERED that appellant's motion to recall mandate and reinstate appeal and motion to substitute counsel, filed February 14, 1968, is hereby denied.

(Signature omitted.)